

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LYDELL BREWER,

Plaintiff-Appellant,

v

PAUL E. SCHULZ and MARGARET SCHULZ,

Defendants-Appellees.

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UNPUBLISHED

December 22, 2005

No. 255987

Wayne Circuit Court

LC No. 03-340557-CZ

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order denying reconsideration of a previous decision granting dismissal in favor of defendant Paul E. Schulz. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action on December 11, 2003. The summons was valid through March 11, 2004. On March 24, 2004, defendants moved to dismiss, asserting in part that the summons had expired without service of process having been made on Paul E. Schulz.<sup>1</sup> The trial court ruled that because service of process had not been made within the life of the summons, it lacked jurisdiction and granted the motion.

Plaintiff filed a timely motion for reconsideration on the ground that the trial court had entered an order for issuance of a second summons valid through May 11, 2004. The trial court denied the motion without explanation.

In general, a party moving for reconsideration “must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F)(3). “This Court has held that the palpable error provision in MCR 2.119(F)(3) is not mandatory and only provides guidance to a court about when it may be appropriate to consider a motion for rehearing or reconsideration.” *People v Walters*, 266 Mich App 341, 350; 700 NW2d 424 (2005). The trial court’s ruling on a

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<sup>1</sup> Defendants also denied liability on the part of Margaret Schulz, and plaintiff stipulated to dismiss her from the action.

motion for reconsideration is reviewed for an abuse of discretion, which “exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion.” *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

Plaintiff clearly demonstrated error by which the trial court and the parties were misled. The trial court and the parties seemed to be under the impression that the original summons expired without being extended. It is clear from the record that a second summons had been issued and was still in effect at the time the trial court entered the order of dismissal. Given that, plus the fact that service of process on Paul E. Schulz had been made during the life of the second summons pursuant to an order for alternate service, it is clear that a different disposition of the motion would have resulted from correction of the error. The trial court abused its discretion in denying the motion for reconsideration.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Donald S. Owens  
/s/ Henry William Saad  
/s/ Karen M. Fort Hood